

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
RCC Holdings, Inc. Petition for Designation)	DA 02-746
As An Eligible Telecommunications Carrier)	
Throughout Its Licensed Service Area in the)	
State of Alabama)	

To: Wireline Competition Bureau

**COMMENTS
OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("Alabama Rural LECs")**

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Brindlee Mountain Telephone Company, Inc.
Butler Telephone Company, Inc.
Frontier Communications of Alabama, Inc.
Frontier Communications of Lamar County, Inc.
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
GTC, Inc., Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

May 23, 2002

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SUMMARY

The Alabama Rural LECs¹ file these comments in opposition to the Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) by RCC Holdings, Inc. (“RCC”) throughout its licensed service area in the State of Alabama. The companies making up the Alabama Rural LECs provide high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service territories. In comparison, RCC does not meet the statutory and regulatory requirements for ETC designation. Specifically, RCC does not offer all of the services supported by the Federal High-Cost Universal Service Program nor has it demonstrated that the public interest would be served by designation of a second ETC in the service areas of the rural telephone companies involved.

Unlike the Alabama Rural LECs who were required to demonstrate that they met the universal service criteria prior to obtaining universal service dollars, RCC has not demonstrated that all portions of its rural territory are indeed in its “footprint.” In fact, affidavits submitted in support of this filing establish that RCC does not provide ubiquitous local service, including access to emergency services throughout its licensed cellular territory. Additionally, RCC has not provided any evidence – only promises, that it will comply with Federal Communications Commission (“Commission”) rules and APSC requirements regarding the advertising of those services for which it seeks universal service dollars.

¹ See Footnote numbered 1 above.

Additionally, RCC has not provided an affirmative statement from the APSC indicating that it does not have jurisdiction over RCC's ETC designation request. Instead, RCC has submitted a letter from the APSC directed to the counsel of another CMRS carrier not similarly situated to RCC. RCC's failure to comply with this requirement should not be ignored. To do so would effectively eviscerate the doctrine of federal-state comity. Moreover, the redefinition of a rural carrier's study area must only occur after active consultation with the appropriate state regulatory body.

Again, while RCC may be licensed to provide telephone service in Alabama, there is no guarantee that it can actually provide service throughout its license areas. In fact, RCC has not provided any specific information that would allow the Commission or the public to ascertain where across the areas RCC has cited for ETC designation (whether exchanges, study areas, or license areas) its signal is actually capable of providing reliable service. The fact that RCC is licensed to provide service does not provide evidence that it is actually providing service.

While RCC does not meet the statutory and regulatory requirements for obtaining ETC designation, the fact that the public interest is not served by RCC's designation must prevent, or at least delay, any action by the Commission granting ETC status to RCC. Granting ETC status to RCC would simply perpetuate, if not give incentive to, distorted competitive entry into the local telecommunications market.

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Ardmore Telephone Company, Blountsville Telephone Company, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc.², Frontier Communications of Alabama, Inc., Frontier Communications of Lamar County, Inc., Frontier Communications of the South, Inc. (formerly Southland Telephone Company), Graceba Total Communications, Inc., GTC, Inc. (formerly the Florala Telephone Company), Gulf Telephone Company, Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., New Hope Telephone Cooperative, Inc., Oakman Telephone Company, OTELCO Telephone LLC, Peoples Telephone Company, Ragland Telephone

² On October 1, 1998, Grove Hill Telephone Corporation and Goshen Telephone Company, Inc., were merged with and into Butler Telephone Company, Inc., now doing business as TDS Telecom.

Company, Roanoke Telephone Company, Inc., Union Springs Telephone Company, Inc. and Valley Telephone Company (the “Alabama Rural LECs”) by counsel, file these comments on the Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) by RCC Holdings, Inc. (“RCC”) throughout its licensed service area in the State of Alabama in accordance with the Commission’s Public Notice released April 2, 2002, DA 02-746. Because RCC does not meet the statutory and regulatory requirements for ETC designation and because RCC has not demonstrated that the public interest would be served by designation of a second ETC in the service areas of the rural telephone companies involved, the Petition should be dismissed.

I. SERVICE PROVIDED BY THE ALABAMA RURAL LECs

The Alabama Rural LECs are incumbent local exchange carriers, which have provided high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service areas in the state of Alabama for an average of over sixty (60) years and are certified as ETCs. The service areas covered by RCC’s petition include those of Butler Telephone Company, Inc. (d/b/a TDS Telecom), Alltel of Alabama, Inc., Frontier Communications of Alabama, Inc., Frontier Communications of Lamar County, Inc., Frontier Communications of the South, Inc., GTC, Inc., Hayneville Telephone Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., Pine Belt Telephone Company, Inc., and Roanoke Telephone Company, Inc. Other Alabama rural local exchange carriers have chosen to join these

comments because of the dangerous precedent that will be set if RCC's petition is approved as filed.³

One of the largest Alabama cities served by the Alabama Rural LECs is Foley, Alabama. Foley, pursuant to 2000 Census figures, has a population of approximately 7,590⁴; the total residential access lines of Gulf Telephone Company ("Gulf") for Foley are approximately 4,900. While it is virtually impossible to calculate the exact percentage of inhabited residences that subscribe to the services provided by Gulf in this rural Alabama town, Gulf estimates that ninety-four (94%) percent of the inhabited residences in Foley subscribe to its telephone service. In addition, the Alabama Rural LECs approximate that a similar percentage of inhabited residences located in their rural Alabama service areas subscribe to telephone service in their combined territory. The Alabama Rural LECs have worked with the APSC to ensure that service is available to all known inhabited rural residences in Alabama within their territory. They are subject to strict minimum service requirements and are required to respond to requests for service

³ Two incumbent local exchange carriers located within the service areas covered by RCC's petition, ALLTEL Alabama, Inc., and Pine Belt Telephone Company, Inc., are not a part of the group submitting these reply comments. One incumbent local exchange carrier not located within the service areas covered by RCC's petition, Farmer's Telephone Cooperative, Inc., is also not a part of the group.

⁴ U.S. Census Bureau, American Fact Finder, Basic Facts, Quick Tables, Alabama Quick Links, 2000 Demographic Profile for Alabama, Counties and Places, Lanett City, http://factfinder.census.gov/bf/?lang=en&vt=name=DEC_2000_SF1_U_DP1_geo_id=16000US0141296.html (visited May 22, 2002).

from any portion of their certificated area by prescribed deadlines.⁵ Further, none of the aforementioned companies have held orders for telephone service.

Of the companies composing the Alabama Rural LECs, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc. (d/b/a TDS Telecom), Gulf Telephone Company, Graceba Total Communications, Inc., Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Millry Telephone Company, Inc., Oakman Telephone Company, OTELCO Telephone LLC, and Peoples Telephone Company, among others, provide telecommunications service to schools and libraries located within their territories. The children served include those located in the following rural cities and towns in Alabama: Arab, Alabama; Ashford, Alabama; Butler, Alabama; Centre, Alabama; Chatom, Alabama; Cottonwood, Alabama; Foley, Alabama; Florala, Alabama; Fruitdale, Alabama; Gilbertown, Alabama; Hayneville, Alabama; Millry, Alabama; Oakman, Alabama; Oneonta, Alabama; Silas, Alabama; and Walnut Grove, Alabama. The companies comprising the Alabama Rural LECs also provide Lifeline and Link Up service to eligible low-income customers located in their respective service areas in accordance with the mandates of 47 C.F.R. §§ 54.405 and 54.411 (2001).

Specifically, in late 1996, the Alabama Rural LECs implemented Lifeline reductions of \$7.00, which included a \$3.50 state component funded without a local rate additive to other local customers. Each of the Alabama Rural LECs have advertised these programs through various mechanisms, including bill inserts, public service announcements and through information made

⁵ Rule T-21, Telephone Rules of the APSC.

available through the APSC.⁶ All of the companies have regularly upgraded the telecommunications plant within their service territory in an effort to improve telephone service and its reliability. In addition, in spite of the significant costs for small rural ILECs, companies have invested in CALEA-compliant software upgrades. In certain instances, they are also required to participate in Extended Area Service arrangements.⁷ The large majority of the Alabama Rural LECs have also adopted expanded area calling plans in an effort to improve rural calling options⁸ and, on at least one occasion, have issued subscriber credits as a result.⁹

⁶ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Fourth Report and Order, APSC Docket 25980, (released November 25, 1997), p. 24; *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Order, APSC Docket 25980, (released June 7, 2001).

⁷ See, e.g., *Implementation of the Extended Area Service Plan for the Pineapple Exchange*, Order, APSC Informal Docket U-3271 (released May 7, 1990) (affecting Southland Telephone Company, Inc., now known as Frontier Communications of the South, Inc.).

⁸ *All Telephone Companies in Alabama Investigation into 0-40 calling across vs. LATA Boundaries*, Order and Notice of Hearing, APSC Docket 22645 (released September 9, 1992); *Southland Telephone Company, Petition for Approval of Proposed Tariff Revisions to add the provisions for Area Calling Service ("ACS")*, Order, APSC Docket 22293 (released February 3, 1992); *Mon-Cre Telephone Cooperative, Inc., Petition for Approval of proposed Tariff Revisions to add ACS provision*, Order, APSC Docket 21777 (released September 14, 1992); *Hayneville Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 23385 (released February 14, 1994); *Monroeville Telephone Company Petition to Introduce ACS*, Amended Order, APSC Docket 23521 (released May 11, 1994); *Grove Hill Telephone Corporation (now known as Butler Telephone Company, Inc.) Petition for Approval to Add Area Calling Plan*, Order, APSC Docket 24619 (released June 12, 1995); *Ragland Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 24619; *Moundville Telephone Company, Inc. Petition for Approval to Introduce ACS*, Order, APSC Docket 26408 (released May 10, 1999).

⁹ *Moundville Telephone Company, Inc. Petition for Issuance of Credits to Subscribers*, Order, APSC Docket 26408 (released May 21, 1998).

II. RCC DOES NOT MEET THE STATUTORY AND REGULATORY REQUIREMENTS FOR ETC DESIGNATION.

Contrary to the assertions set forth in its petition, RCC does not meet the statutory and regulatory requirements for ETC designation by the FCC pursuant to Section 214(e)(6)¹⁰ as set forth in the FCC's Section 214(e)(6) Public Notice¹¹, as demonstrated below.

A. RCC Has Not Obtained an Affirmative Statement from the Alabama Public Service Commission ("APSC") That It Has No Jurisdiction Over Its Request.

The APSC has the "primary responsibility" for making ETC designations in the state of Alabama.¹² However, in those instances where a state commission does not have the authority to make the ETC designation, the Commission must perform the task.¹³ In interpreting the application of these provisions, the Commission has previously held that it "will act on a Section 214(e)(6) designation request ... only in those situations where the carrier can provide the

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). References to section 214(e) in these Comments refer to the provision of universal service by an ETC under this section of the 1996 Act, which is codified at 47 U.S.C. § 214(e) of the Act.

¹¹ *Procedures for FCC Designation Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1996*, Public Notice, 12 FCC Rcd 22947 ("Public Notice").

¹² *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket 96-45, 15 F.C.C.R. 12208, para. 93 (2000) ("*Twelfth Report and Order*"); 47 USC § 214(e)(6).

¹³ *Twelfth Report and Order*, para. 92; 47 USC § 214(e)(6).

Commission with an affirmative statement from the state commission or a court of competent jurisdiction that *the carrier* is not subject to the state commission's jurisdiction."¹⁴

The “‘affirmative statement’ of the state commission may consist of any duly authorized letter, comment or state commission order indicating that it lacks jurisdiction to perform designations over a *particular* carrier. *Each carrier* should consult with the state commission to receive such a notification, *rather than relying on notifications that may have been provided to similarly situated carriers.*”¹⁵

RCC has not provided an “affirmative statement” that meets the Commission's requirements found in the *Twelfth Report and Order* and should not be allowed to rely on a letter directed to the counsel of another carrier. Additionally, while RCC is a CMRS carrier, it is the first to request ETC status in the service area of a rural incumbent local exchange carrier (“Rural ILEC”) in Alabama. Because the APSC has not yet faced such a situation, it is crucial that RCC be required to seek its own notification in accordance with prior Commission pronouncements.

Although the Commission has previously rejected the argument found in Section 214(e)(6) petitions that it must first consult with a state commission before designating a CMRS provider as an ETC for a service area that differs from the Rural ILEC's study area,¹⁶ the Commission has also recognized that state commissions must be ensured the opportunity to

¹⁴ *Twelfth Report and Order*, para. 93 (*emphasis added*).

¹⁵ *Twelfth Report and Order*, para. 113 (*emphasis added*).

¹⁶ Arguably Section 214(e)(5) prohibits an ETC designation for an area that encompasses less than a rural carrier's study area absent agreement between the Commission and the APSC. If the APSC sought to use a different “service area” for an ETC applicant in a rural carrier's study area,

participate fully in the ETC designation proceeding.¹⁷ Requiring RCC to abide by the Commission's "affirmative statement" prerequisite is of added significance not only because this is the first request for ETC designation in the service area of a Rural ILEC located in Alabama, but also because the APSC has previously addressed the implementation of Section 214(e) of the Act. Specifically, the APSC has found that a competitive carrier should only be certified as a Competitive Eligible Telecommunications Carrier ("CETC") in a Rural ILEC service area if it can demonstrate "compelling circumstances" that the designation is in the public interest:

*"Any carrier that desires designation as an ETC in the service area of a rural local exchange company (LEC) must demonstrate compelling circumstances indicating that it is in the public interest to have an ETC other than the incumbent LEC in the study area of that rural incumbent LEC. Further, carriers seeking designation as ETCs in the service areas of rural incumbent LECs must, if so approved, serve the entire service area of the rural LEC absent a compelling demonstration as to why some other lesser service area would better serve the public interest."*¹⁸

The letter issued to counsel for Pine Belt Cellular and Pine Belt PCS on which RCC relies is a letter that only addresses ETC designation of a CMRS carrier in areas served by non-rural incumbent LECs. The prior holding of the APSC that "any carrier" seeking CETC designation in the territory of a Rural ILEC must demonstrate "compelling circumstances" that the designation is in the public interest before obtaining ETC status in an area that encompasses less than all of the

federal and state concurrence on the new definition would be required. 47 C.F.R. § 54.207.

¹⁷ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Report and Order, CC Docket 96-45, 16 F.C.C.R. 18,133 (2001) (*"Western Wireless South Dakota Memorandum Opinion and Order Number 1"*), para. 18.

¹⁸ *Implementation of The Universal Service Requirements Of Section 254 Of The Telecommunication Act of 1996*, Notice, APSC Docket 25980, (released October 31, 1997).

rural LECs service area¹⁹ underscores why the APSC should be required to address this particular issue. RCC must be required to strictly adhere to this Commission's "affirmative statement" requirements and not be allowed to rely on the notification of another carrier that is not even "similarly situated" to RCC.²⁰ Simply put, RCC must obtain an order from the APSC declaring that it lacks jurisdiction over RCC's request prior to the filing of its petition.

Additionally, active consultation with the APSC would help the FCC address one of the critical issues raised by the Alabama Rural LECs, the failure of RCC to truly offer universal service throughout its requested service area. The APSC employs engineers and customer service representatives that could provide further insight regarding the service actually offered by RCC to the public. It is impossible, however, for the APSC to provide such input in the limited amount of time available for the presentation of comments.²¹ The concept of federal-state comity and the right of a state commission to interpret its own laws must not yield to expediency.²²

B. RCC Does Not Offer All of the Services Supported by the Federal High-Cost Universal Service Program.

A common carrier designated as an ETC may not receive universal service support unless the carrier offers the services supported by universal service support mechanisms, either through

¹⁹ Id.

²⁰ *See, Twelfth Report and Order*, para. 113.

²¹ The APSC has previously cited the problem of poor service quality in some rural Alabama areas. *APSC Report on Proposed Regulation of Wireless Carriers in Alabama*, <http://www.psc.state.al.us/Telecomm/wireless.htm> (visited May 16, 2002).

²² *See, Twelfth Report and Order*, para. 113.

the use of its own facilities or some combination of its own and the resale of another carrier's services.²³

The services designated for support include: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory service; and, (9) toll limitation for qualifying low income customers.²⁴

1. Voice Grade Access to the Public Switched Network and Single-Party Service or its Functional Equivalent.

Although RCC articulates the Commission's bandwidth requirement and asserts that RCC customers "are able to make and receive calls on the public switched network within the specified bandwidth"²⁵ and that it "provides a dedicated message path for the length of a user's particular transmission" in compliance with 47 CFR § 54.101(a)(3)²⁶, RCC simply does not provide single-party voice grade service in all of the areas where it requests ETC designation. Finding "dead spots" within the cellular network does not require much effort. For example, using a RCC phone at 708 Robinson Switch Road in Lowndesboro, Alabama, quickly reveals that RCC is not willing or capable of providing acceptable levels of service "throughout its entire service area" as

²³ 47 USC § 214(e)(1)(A).

²⁴ 47 CFR § 54.101(a) (1998).

²⁵ Petition of RCC Holdings, Inc. for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama ("*RCC Petition*") at 4 – 5.

²⁶ *RCC Petition* at 6.

required by Section 214(e)(1).²⁷ The Petitioner simply does not, and with its current infrastructure cannot, provide ubiquitous service throughout its Alabama “footprint”, which is the area for which RCC seeks designation as a second ETC.²⁸ In contrast, each of the Rural LECs was required to demonstrate that they met the universal service criteria prior to becoming eligible to receive funding²⁹ and is subject to continuing APSC monitoring of the use of universal service funds.³⁰ The Alabama Rural LECs respectfully request that the Commission take notice of the well-established fact that the network configuration – especially the placement of towers, of all cellular providers, including RCC, affect the ability of a caller to transmit and receive voice communications³¹. Additionally, certain naturally occurring events and conditions, such as weather, topography of an area and even cellular shadows, impact the service reliability of cellular

²⁷ Affidavit of Evelyn P. Causey, attached hereto as Exhibit A (“*Causey Affidavit*”). See also, Affidavits of Paul Ayers, Terry Stone and Helen Thomas, attached hereto collectively as Exhibit B (the “*Service Affidavits*”) (reflecting RCC service problems in additional areas).

²⁸ While the *RCC Petition* at Exhibit E suggests that RCC covers the entire service area of Pine Belt Telephone Company, Inc., it is not clear to the Alabama Rural LECs that this is indeed the case. Please also note that the Alabama Rural LECs were unable to secure a copy of RCC’s Map filed as Exhibit C of the *RCC Petition*.

²⁹ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Fifth Report and Order, APSC Docket 25980, (released December 18, 1997).

³⁰ *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Report and Order, APSC Docket 25980, (released December 20, 2001).

³¹ See, Unicel, Service Information, Coverage (visited May 22, 2002) <http://www.gottagetone.com/> (indicating that “[a]ctual coverage may vary depending on customer equipment, atmospheric conditions and terrain.”).

service providers such as RCC. To truly provide ubiquitous service, RCC would have been required to make the same type of infrastructure investment as the Rural LECs, making uneconomical capital investments to serve a few customers in remote areas. Rather than undertaking this commitment, they wish to receive universal service support, *at the front end*, for selected higher traffic rural areas. RCC should be required to demonstrate that all portions of its rural territory are indeed in its “footprint” prior to ETC designation. A mere affirmative statement that it will provide such service is not enough. Alabama ILECs, as providers of universal service, stand ready to provide service to all potential customers within their service territories, and believe that this is an essential part of “universal” service. Without this type of commitment, including the requirements mentioned above, it simply does not make sense to provide a carrier with scarce universal service dollars.

The failure of RCC to meet established statutory requirements should preclude it from obtaining designation as a second ETC in the rural service areas of the Alabama Rural LECs. While the Commission has rejected the idea that CMRS service providers are ineligible for universal service support and has noted that “competitive neutrality includes technological neutrality”, the Commission has not disregarded the requirement that a CMRS provider meet the Section 214(e) requirements.³² As the Commission has previously noted, “an ETC ... has a

³² *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket 96-45, 16 F.C.C. R. 48 (2000) (“*Western Wireless Wyoming Memorandum Opinion and Order*”), para. 11.

statutory duty to offer service to every customer within the designated service area.”³³ RCC simply has not demonstrated that it complies with this basic eligibility requirement.

2. Local Usage.

RCC’s own petition fails to provide sufficient evidence that its service offerings include local usage. In general, RCC states that it “now provides *or will provide*, upon designation, the required services.”³⁴ Thus, while the *Public Notice* requires that the petitioner provide all of the supported services set out in 47 C.F.R. §54.101 (1998), including local service, the *RCC Petition* states that RCC “*will* comply with any and all minimum local usage requirements adopted by the FCC. RCC *will meet* the local usage requirements by including a variety of local usage plans as part of a universal service offering.”³⁵ While RCC says it is committing to the provision of local usage, it does not allege that it is currently providing such service nor has RCC detailed what their universal service offerings will consist of.

In considering the *Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota filed by Western Wireless Corporation* and whether Western Wireless met the requirement of section 214(e)(1)(A) to offer the services that are supported by the Federal Universal Service Support mechanisms – including the local usage requirement, the FCC observed “although the Commission has not set a minimum local usage requirement, Western Wireless currently offers several service options that include varying

³³ *Western Wireless Wyoming Memorandum Opinion and Order*, para. 20.

³⁴ *RCC Petition* at 4 (*emphasis added*).

³⁵ *Id.* at 5.

amounts of local usage in its monthly service plans.”³⁶ In its petition, RCC failed to provide such evidence in this case.

3. Access to Emergency Services.

RCC alleges that it “currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement.” However, as discussed above, numerous “dead spots” exist throughout the coverage area of RCC, making access to emergency service “throughout its service territory” impossible. The Commission has not been presented with sufficient evidence to reach a conclusion that this criterion has been met.

In the *Twelfth Report and Order*, the Commission acknowledged the enormous disadvantage suffered by residents who lack telecommunication services.³⁷ “The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences.”³⁸ Again, a caller only has to stand inside the residence located at 7449 County Road 40, Lowndesboro, Alabama to quickly recognize the existence of another “dead spot” in RCC’s Alabama service territory.³⁹ If a homeowner located at the residence has opted to make its RCC cellular telephone its only source of voice communication, access to 911 services might be impossible or depend on where the caller stands within the residence. Granting ETC status to RCC before it can demonstrate the provision

³⁶ *Western Wireless South Dakota Memorandum Opinion and Order 1*, para. 8.

³⁷ *Twelfth Report and Order*, para 3.

³⁸ *Id.*

³⁹ *Causey Affidavit*; *See also, Service Affidavits.*

of ubiquitous voice access to emergency services “throughout its service area”, would not only violate the requirements of Section 214(e), but would risk greater potential for lack of care for rural residents facing life-threatening emergencies.

C. RCC Does Not Advertise the Availability of the Services Designated for Support by the Federal High-Cost Universal Service Program and the Charges for said Services Using Media of General Distribution.

In addition to the requirement that a common carrier offer the services supported by universal service support mechanisms, it must also advertise the availability of those services and the charges for them using media of general distribution.⁴⁰ In other words, “Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services.”⁴¹

The Commission has discussed the added importance of advertising Lifeline and Link Up services to rural customers and has codified the advertising requirement in its rules addressing those programs.⁴² Those amended rules require that the two programs be publicized “in a manner reasonably designed to reach those likely to qualify for those services.”⁴³ In fact, the Commission has concluded that carriers must be encouraged to undertake special certain efforts beyond regional advertising and the placing locally of posters in order to meet the publicity requirements

⁴⁰ 47 USC § 214(e)(1)(B); 47 CFR 54.201(d)(2) (1999).

⁴¹ *Twelfth Report and Order*, para. 76.

⁴² *Id.* at para. 76-80; 47 CFR §§ 54.405(b) and 54.411(d) (2001).

⁴³ *Id.* at para.78; *Id.*

attached to Lifeline and Link Up services.⁴⁴ Whereas the Alabama rural LECs have been required to demonstrate actual compliance with very specific APSC advertising requirements, RCC has failed to present any evidence demonstrating how it even intends to meet this requirement. While the Alabama Rural LECs recognize that this Commission has not prescribed specific methods for achieving the goal of effective advertising, the Commission has required that ETCs “identify communities with the lowest subscribership levels in its service territory and make appropriate efforts to reach qualifying individuals within their communities.”⁴⁵

III. DESIGNATION OF RCC AS AN ETC IN ITS SERVICE AREA IN ALABAMA IS NOT IN THE PUBLIC INTEREST.

“Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.”⁴⁶ The designation of RCC as an additional ETC, in the service area of the rural ILECs that make up the Alabama Rural LECs is not in the public interest. In fact, it will (1) harm consumers⁴⁷ and undermine the federal universal service fund and (2) reduce investment in infrastructure, raise rates or reduce service quality to consumers in rural areas.

⁴⁴ Id.

⁴⁵ Id. at para. 79.

⁴⁶ *Western Wireless Wyoming Memorandum Opinion and Order*, para. 3; *See also*, *Western Wireless South Dakota Memorandum Opinion and Order 1*, para. 3.

⁴⁷ *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d b a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, Memorandum Opinion and Order, CC Docket 96-45, 17 F.C.C.R. 1502 (released January 25, 2002) (“*Guam Memorandum Opinion and Order*”), para. 16.

Rural ILEC customers, like those currently served by the Alabama Rural LECs, do not “travel” with their telephones, which guarantees that the universal service support they receive will be used “only for the provision, maintenance, and upgrading of facilities for which the support is intended.”⁴⁸ In contrast, RCC customers have portable voice communications service and as such can take the service outside RCC’s designated ETC service area.

Currently, no adequate protections exist to insure that universal service support paid to RCC (which will be based on the ILEC’s costs rather than RCC’s) will be used to *benefit subscribers* that use the service *within* the requested designation area. In fact, because the service area in which a rural customer resides may not correspond to where the customer uses RCC’s voice communications service, the universal service fund will be negatively affected and its intended beneficiaries harmed. Until CMRS carriers are required to monitor subscriber usage and terminate universal service support for those subscribers who actually use the service outside the designated service area, CETCs like RCC will be motivated to seek high levels of per-line support. RCC will obtain customers located in rural ILEC territory; those customers will primarily use their RCC service in locations well beyond the geographic constraints of the area designated for support; and, ultimately high cost support will be paid to RCC for services used in low-cost, urban areas. Because of this aforementioned scenario – which is not only possible but also highly probable, RCC must not be granted ETC status in the service areas of Rural ILECs until adequate controls are in place. Otherwise, carriers like RCC will receive support for which

⁴⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

they will not be accountable in contravention of Section 254 and this Commission's articulated goals. "In particular, we intend to develop a long-term plan that *better targets support to carriers serving high-cost areas*, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers."⁴⁹ This is most critical in cases like this where the carrier seeks the designation of a service area other than that of the incumbent rural LEC.

The windfall of RCC and other similarly situated carriers may be the downfall of the Universal Service Fund. While the goal of the Telecommunications Act is competition, the Commission cannot provide RCC with an incentive to design a business strategy that may destroy universal service support. If CMRS carriers like RCC are routinely granted ETC status without any Universal Service Fund protections in place, the improperly distributed support may actually prevent much needed support from ever reaching true high-cost, rural areas and harm consumers located in those areas. Even if the Alabama Rural LECs continue to receive support for providing an access line to the same customer, the resulting demand on universal service funding could raise the cost of these support mechanisms to an unsustainable level, jeopardizing the very goal that the

(Communications Act or Act). References to section 254 in these Comments refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act.

⁴⁹ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket 96-45 and Report and Order, CC Docket 00-256, 16 F.C.C.R. 11,244 (2001) ("*Fourteenth Report and Order*"), para. 8 (footnote omitted).

fund was designed to achieve. Some mechanism must be put in place that balances promoting entry in the high cost, rural areas and uneconomic motivation to competition.⁵⁰

In the very first order of the Commission addressing the implementation of the 1996 Act, the Commission declared that it would seek to reform universal service support “because the current system distorts competition in those markets.”⁵¹ Simply put, the outcome described above also distorts competition in rural markets, by allowing RCC to obtain universal service support without truly providing ubiquitous service within its service area (however defined) and without applying such support to the provision of universal service in the areas for which it is targeted. This is incompatible with the statutory mandates of Section 254.

Absent growth of the Universal Service Fund, the misdirected support to carriers like RCC may deplete resources that should be directed to consumers in actual high-cost areas. Such a result is not in the public interest.

The Rural Alabama LECs are aware of the Commission’s prior disagreement with the assertions of petitioners Golden West Telephone Cooperative, Project Telephone Company and Range Telephone Company in their *Petition for Reconsideration of Western Wireless*

⁵⁰ See, *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001). Statement of Commissioner Kevin J. Martin, Approving in Part, Concurring in Part and Issuing a Statement.

⁵¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 F.C.C.R. 15,499, para. 5 (footnotes omitted).

*Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*⁵² as well as the assertions of petitioners Chugwater Telephone Company, Range Telephone Cooperative, Inc. and RT Communications, Inc. in their similar *Petition for Reconsideration and/or Clarification*⁵³ alleging that "competition may erode their customer base forcing higher rates to remaining customers".⁵⁴ For this reason, the Alabama Rural LECs have attempted to provide the Commission with specific evidence of the targeted nature of RCC's service, to address both RCC's failure to qualify for ETC designation and to underscore why such targeted competition should not be sponsored by the Universal Service Fund. The Alabama Rural LECs respectfully assert that, *in this instance*, Section 214(e) is, by itself, insufficient to protect them and their customers from the deleterious effects of "cream skimming" by new entrants.⁵⁵

It is important to remember that RCC, unlike the Rural Alabama LECs, is not subject to price regulation for basic services. Currently, profitable wireless carriers such as RCC are already pricing their service packages at attractive rates despite not receiving any federal universal service funding. If ETC status is granted based on the present filing, this will create a revenue windfall for RCC with no accountability to enhance their infrastructure with the dollars they receive. In

⁵² Golden West et al. Petition for Reconsideration (filed January 25, 2001).

⁵³ Chugwater et al. Petition for Reconsideration and/or Clarification (filed January 25, 2001).

⁵⁴ *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001) ("*Wyoming Order on Reconsideration*"), para. 19.

⁵⁵ *Compare, Wyoming Order on Reconsideration*, para. 12 (discussing the elimination of a concern regarding "cream skimming" due to the enactment of disaggregation options).

addition, system economics could exacerbate this scenario and drive RCC to offer more attractive bundled service packages to customers located only in certain profitable submarkets in the service territory of the Rural Alabama LECs, such as along a major highway or in an urban suburb. With its more lucrative customers lost, the Rural ILEC will then be required to spread its costs over a diminishing customer base. Testimony in the *Generic Hearing on Local Competition*, APSC Dockets No. 24499, 24472, 24030, and 24865 established the reliance of many rural LECs in Alabama on a few large business customers. The impact of such “cream skimming” will, inevitably, result in higher rates or increased demands on universal service to keep rates “reasonably comparable” as required by the Act.

Existing disaggregation options do not sufficiently address the aforementioned rate spiral caused by this type of competition and RCC’s petition should be denied. Unlike other states, none of the Alabama Rural LECs serve large, geographically dispersed service areas, which might justify consideration of a smaller area for universal service support. The APSC has required the Alabama Rural LECs to make substantial investments in plant to offer ubiquitous service throughout their service areas. This policy should be changed only after careful review and presentation of evidence by RCC that the interests of rural customers will not be harmed by effectively allowing telephone companies to “pick and choose” which areas within existing rural telephone service territories they will offer basic services using universal service support.

IV. CONCLUSION.

RCC does not meet the statutory and regulatory requirements for ETC designation. It has not provided an “affirmative statement” that meets the Commission’s requirements as articulated

in the *Twelfth Report and Order*. It does not offer all of the services supported by the federal high-cost universal service program as required by Section 214 of the Act, nor does it advertise the availability of those services in accordance with Commission requirements. Finally, the public interest will not be served by designation of a second ETC in the service areas of the Rural Telephone Companies involved because designation (1) will harm consumers and detrimentally impact the Universal Service fund and (2) reduce investment, raise rates and reduce service quality in rural areas.

Accordingly, the Alabama Rural LECs urge the Commission to

- require RCC Holdings to obtain a carrier specific “affirmative statement” from the APSC;
- refrain from granting RCC’s ETC petition until meets all the requirements of Section 214 and applicable state requirements;
- deny RCC’s request to redefine the study areas of the Alabama Rural LECs, or alternatively, refrain from redefining the study areas of any of the Alabama Rural LECs prior to active consultation with the APSC; and,
- refrain from granting RCC’s ETC petition until sufficient safeguards are in place to guarantee that the public interest is not harmed by an undermining of the Universal Service Fund and the resulting reduction in infrastructure investment, increase in rates and reduction in service quality available to high-cost, rural areas in Alabama.

Respectfully submitted,
Alabama Rural LECs

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May 23, 2002

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 23rd day of May, 2002, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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